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OFFICE OF PETITIONS

In re Application of

Pappin, et al.

Application No. 10/765,264

Filed: January 27, 2004

Attorney Docket No. BP0207-US2

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DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181(a) to withdraw the holding of abandonment, filed March 6, 2009.

The petition under 37 CFR 1.181(a) to withdraw the holding of abandonment is **granted**.

This application was held abandoned on September 13, 2008, after it was believed that a proper response was received to the non-final Office action mailed June 12, 2008, which set a shortened statutory period for reply of three months from its mailing date. A Notice of Abandonment was mailed January 9, 2009.

Petitioner maintains that a proper and timely response to the non-final Office action was deposited with the United States Postal Service, first class mail on December 12, 2008. The response was in the form of an amendment. As evidence of the same, petitioner provides a copy of the amendment and a request for an extension of time within the third month containing a certificate of mailing dated December 12, 2008.

Petitioner's argument has been considered and is persuasive. Section 711.03(c) of the MPEP provides, in pertinent part, that:

Where a certificate of mailing under 37 CFR 1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 CFR 1.8(b) and MPEP § 512. As stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into

PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 CFR 1.8).

A review of the copy of the amendment and request for extension of time reveals that it contains a certificate of mailing dated December 12, 2008, that is signed by Kurt T. Mulville who also signed the petition document. Petitioner properly used the protections offered by 37 CFR 1.8 and is, therefore, entitled to assert that the response mailed December 12, 2008, is timely by virtue of the certificate of mailing dated December 12, 2008, contained thereon. The petition is granted, accordingly.

Deposit account 15-0665 will be charged \$1,110.00 for the extension of time within the third month.

Further inquiries regarding this decision may be directed to the undersigned at (571) 272-3222.

The application file is being forwarded to Technology Center GAU 1797 for further processing including consideration of the amendment filed March 6, 2009.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions